DEC 2 0 2002

# 2

3

4 5

6

7 8

10

11

9

12 13

14

15

16 17

18

19

21

20

22 23

24

25

### STATE OF ARIZONA

DEPT. OFTWO HANCE

DEPARTMENT OF INSURANCE

FINANCIAL INDEMNITY COMPANY, NAIC # 19852,

Respondent.

In the Matter of:

Docket No. 02A-222-INS

**CONSENT ORDER** 

Examiners for the Department of Insurance (the "Department") conducted a market conduct examination of Financial Indemnity Company ("Financial Indemnity"). In the Report of Examination of the Market Conduct Affairs of Financial Indemnity, the Examiners allege that Financial Indemnity violated A.R.S. §§20-461, 20-1632.01 and A.A.C. R20-6-801.

Financial Indemnity wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

## FINDINGS OF FACT

- Financial Indemnity is authorized to transact property and casualty 1. insurance pursuant to a Certificate of Authority issued by the Director.
- The Examiners were authorized by the Director to conduct a market 2. conduct examination of Financial Indemnity. The on-site examination covered the time period from May 1, 2001 to April 30, 2002 and was concluded on August 29, 2002. Based on their findings, the Examiners prepared the "Report of Examination of the Market Conduct Affairs of Financial Indemnity Company" dated August 29, 2002.
- The Examiners reviewed 142 of 10,084 personal automobile policy files 3. cancelled or nonrenewed during the time frame of the examination and found that Financial Indemnity failed to provide a grace period to 25 insureds whose policies were

12 13

14 15

16 17

18

19

20

21 22

23 24

25

nonrenewed due to non-payment since the cancellation notice was not effective as of the mailing date and was backdated to the renewal date. Lists provided to the Examiners by the Company indicated that 935 policies were similarly cancelled.

- The Examiners reviewed 150 of an unknown total number of first party 4. automobile total loss claim files processed by the Company during the time frame of the Examination and found that Financial Indemnity failed to pay the correct amount of taxes and fees on 134 claims.
- 5. The Examiners reviewed 35 of an unknown total number of third party automobile total loss claim files processed by the Company during the time frame of the Examination and found that Financial Indemnity failed to include the appropriate taxes and fees on 32 claims.
- Financial Indemnity's failure to pay all taxes and fees to first and third 6. party automobile total loss claimants resulted in 166 claims being underpaid a total of \$8,158.54. Financial Indemnity's failure to pay the full actual cash value on first party automobile total loss settlements resulted in 5 claims being underpaid a total of \$717.52. Financial Indemnity's failure to reimburse an insured his deductible after the Company successfully subrogated a claim resulted in one insured being underpaid \$500.00. Financial Indemnity's failure to apply the correct driver discount when rating a policy resulted in one insured being overcharged \$28.00. All amounts payable to insureds and claimants were paid by the Company, plus \$854.91 interest, while the Examiners were on-site at Financial Indemnity.

# CONCLUSIONS OF LAW

Financial Indemnity violated A.R.S. §20-1632.01(B) by mailing personal 1. automobile cancellation notices that were not effective as of the mailing date, were backdated to the renewal date.

- 2. Financial Indemnity violated A.A.C. R20-6-801(H)(1)(b) and A.R.S §20-461(A)(6) by not paying all applicable taxes and fees on first party automobile total losses.
- 3. Financial Indemnity violated A.R.S §20-461(A)(6) by not paying all applicable taxes and fees on third party automobile total losses.
- 4. Grounds exist for the entry of the following Order in accordance with A.R.S. §§ 20-220 and 20-456.

### <u>ORDER</u>

#### IT IS HEREBY ORDERED THAT:

- 1. Financial Indemnity shall cease and desist from:
- a. Sending cancellation notices on personal automobile policies that are not effective as of the mailing date and that are backdated to the renewal date
- b. Failing to pay all applicable taxes and fees on first and third party automobile total losses.
- 2. Within 90 days of the filed date of this Order, Financial Indemnity shall submit to the Arizona Department of Insurance, for approval, evidence that corrections have been implemented and communicated to the appropriate personnel, regarding the issues outlined in Paragraph 1 of the Order section of this Consent Order. Evidence of corrective action and communication thereof includes, but is not limited to, memos, bulletins, E-mails, correspondence, procedures manuals, print screens, and training materials.
- 3. The Department shall be permitted, through authorized representatives, to verify that Financial Indemnity has complied with all provisions of this Order.
- 4. Financial Indemnity shall pay a civil penalty of \$25,000.00 to the Director for remission to the State Treasurer for deposit in the State General Fund in

accordance with A.R.S. §§ 20-220(B) and 20-456. The civil penalty shall be provided to the Market Conduct Examination Section of the Department prior to the filing of this Order.

5. The Report of Examination of the Market Conduct Affairs of Financial Indemnity Company as of August 29, 2002, including the letter of objection to the Report of Examination, shall be filed with the Department upon the filing of this Order. DATED at Phoenix, AZ this \_

> Charles R. Cohen Director of Insurance

, 2002.

10

12 13

14 15

16

17

18

19 20

21

22 23

24 25

1. Financial Indemnity Company has reviewed the foregoing Order.

2. Financial Indemnity Company admits the jurisdiction of the Director of Insurance, State of Arizona, admits the foregoing Findings of Fact, and consents to the entry of the Conclusions of Law and Order.

Financial Indemnity Company is aware of the right to a hearing, at which 3. it may be represented by counsel, present evidence and cross-examine witnesses. Financial Indemnity Company irrevocably waives the right to such notice and hearing and to any court appeals related to this Order.

4. Financial Indemnity Company states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

5. Financial Indemnity Company acknowledges that the acceptance of this Order by the Director of the Arizona Department of Insurance is solely for the purpose of settling this matter and does not preclude any other agency or officer of this state or its subdivisions or any other person from instituting proceedings, whether civil, criminal, or administrative, as may be appropriate now or in the future.

Edward D. Cimini, Jr., who holds the office of 6. Sr. Vice President of Financial Indemnity Company, is authorized to enter into this Order for them and on their behalf.

FINANCIAL INDEMNITY COMPANY

12-5-02 Date

By Edward D. Cimini, Jr.

1	The second control of the control of
2	I und 20th day of December 2002 to
3	11 - 3.03
4	Deputy Director  Mary Butterfield
5	Assistant Director Consumer Affairs Division
6	Paul J. Hogan
7	Chief Market Conduct Examiner Deloris E. Williamson
8	Assistant Director Rates & Regulations Division
9	Steve Ferguson Assistant Director
10	Financial Affairs Division Alan Griffieth
11	Chief Financial Examiner Alexandra Schafer
12	Assistant Director Life and Health Division
13	Terry L. Cooper Fraud Unit Chief
14	Tradd Offic Chief
15	DEPARTMENT OF INSURANCE
16	2910 North 44th Street, Suite 210 Phoenix, AZ 85018
17	
18	J. Michael Low, Esq Financial Indemnity Company
19	C/O Low & Childers, P.C. 2999 North 44 <sup>th</sup> Street
20	Phoenix, AZ 85018
21	
22	Lency Buston
23	
24	